

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DONALD EDWARD LARUE
JOHNSON, JR.,

Plaintiff,

vs.

HARPER/COLLINS, ET AL.,
DELAWARE PRENTICE HALL CO.
SYSTEM,

Defendants.

Civil No. 06-747-AA
O R D E R

AIKEN, Judge:

Plaintiff, pro se, filed a complaint against the defendant alleging that defendant violated his rights by publishing his likeness without his permission in the book titled, Off Base: Confessions of a Thief, baseball player Rickey Henderson's "as told to" biography published by defendant in the early 1990s. As part of relating Henderson's life story, the book contains a group photograph of Henderson's 1975 high school baseball team. Based on the photo in the book, and plaintiff's allegation that he appears in the photo as one of Henderson's eleven teammates, plaintiff alleges that he is entitled to payment for use of his likeness without his permission. Complaint, ¶¶ 2,6.

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1 Defendant asserts plaintiff's claim is barred based on the
2 statute of limitations. I agree. Assuming that plaintiff is
3 bringing a claim for misappropriation/right of publicity,¹
4 plaintiff's claim is subject to Oregon's two-year statute of
5 limitations period. See Or. Rev. Stat. § 12.110(1) ("An action for
6 . . . any injury to the person or rights of another, not arising
7 in contract, and not especially enumerated in this chapter, shall
8 be commenced within two years."). Plaintiff alleges the book was
9 published in June 1992. Complaint, ¶ 4, Ex. A. Plaintiff's claim
10 was therefore time-barred as of June 1994. Even if the court
11 allows that plaintiff did not learn of the book's publication
12 until March 5, 2004, when plaintiff wrote to defendant indicating
13 that he was aware of the photograph at issue in the book,
14 Complaint, Ex. A, plaintiff filed his claim April 18, 2006, more
15 than two years after he discovered the publication of the book and
16 the photograph at issue. I agree that plaintiff's claim is time-
17 barred on its face.

18 Moreover, I find that pursuant to Fed. R. Civ. P. 12(b)(6),
19 plaintiff's complaint fails to state a claim. No claim for
20 tortious appropriation of a person's name or image exists where
21 "a person whose image, with no established public familiarity,
22 appears in a commercial context only incidentally, perhaps as one
23 of several persons in a public scene, or otherwise under
24 circumstances that plainly are not presented so as to convey any
25 endorsement by that person." Anderson v. Fisher Broadcasting
26 Cos., Inc., 300 Or. 452, 468, 712 P.2d 803 (1986). Here,
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28 ¹ Plaintiff fails to provide a title for his claim in his
Complaint.

1 plaintiff has no "established public familiarity," nor has
2 plaintiff alleged that his picture was wrongly obtained or
3 published beyond plaintiff's claim at bar. The book is a
4 biography of Henderson. Henderson's membership on his own high
5 school baseball team is part of his biography. The inclusion of
6 the photograph and appearance of plaintiff in the photograph do
7 not convey any endorsement of Henderson or anything about
8 Henderson. I find that plaintiff's appearance in the photograph
9 is incidental, therefore, requiring plaintiff's permission or
10 payment of plaintiff for use of the team photo in the book is not
11 required as a matter of law. Plaintiff's complaint fails to state
12 a claim and is dismissed.

13 CONCLUSION

14 Defendant's motion to dismiss (doc. 4) is granted. This case
15 is dismissed. All pending motions are denied as moot.
16 IT IS SO ORDERED.

17 Dated this 1 day of August 2006.

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21 /s/ Ann Aiken
22 Ann Aiken
23 United States District Judge
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